Government restructuring - divestments and the OMERS pension plan

OMERS

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Information

Government Restructuring – Divestments and the OMERS Pension Plan

Major changes are taking place in government responsibilities and service delivery in Ontario. Services are being transferred between provincial and municipal levels, new employers are being established to provide services and some local government employers are making arrangements with other employers for the delivery of services. Any of these changes may result in what OMERS calls a divestment.

When a divestment does occur, the *Pension Benefits Act* (PBA) of Ontario provides for the protection of pension plan member rights and entitlements.

This booklet is designed to help existing or potential OMERS employers interpret these rules from an OMERS perspective.

Definition of a divestment

As an employer, if you are involved in any of these changes, you may be part of a divestment. For pension purposes, a divestment occurs if all of the following conditions exist:

1. an employer (the former employer) sells, assigns or otherwise disposes of all or part of its business to another employer (the new employer);
2. the former employer and the new employer contribute to different registered pension plans (public or private);
3. all or some employees of the former employer become employed by the new employer when the divestment occurs; and
4. these same employees become members of the new employer's pension plan.

Note: Employees do not have to be guaranteed jobs with the new employer in order to be covered under the pension divestment rules. For example, if employees must apply for jobs with the new employer and are successful in obtaining employment, they are deemed to be part of a divestment for pension purposes.

If all of the above conditions do not exist in your particular case, please read the section "OMERS Entitlements If All Four Criteria Are Not Met" (pages 5-6).

OMERS Entitlements If All Four Criteria Are Met

When all four criteria are met, Section 80 of the PBA provides special rules for the treatment of pensions under both the old and new pension plans. One of the most important provisions is that each pension plan must recognize service in the other when determining a member's eligibility for pension benefits.

This section of the PBA also allows pension plans to negotiate a "divestment transfer agreement" to transfer the pension assets and liabilities to the new plan rather than maintaining pension benefits under two separate plans.

At the present time, the OMERS plan only permits transfers with other public sector employers. We have requested a change to the plan that would

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allow us to transfer funds to and from private sector employer pension plans, but we are unable to do so at this time. Therefore, if the other employer involved in the divestment is a private sector employer, separate pensions must be maintained.

Divestment transfer agreements

The terms of a divestment transfer agreement are negotiated between the two pension plans involved in the divestment. This agreement must then be approved by the Superintendent of Pensions at the Pension Commission of Ontario.

We have begun working with other plans to negotiate divestment agreements. Until we are able to successfully negotiate an agreement and receive approval from the Superintendent of Pensions, members involved in a divestment must maintain two separate pensions.

In the absence of a divestment transfer agreement, Section 80 of the PBA states that member pension benefits must be treated in a special way. The following sections outline the rules that must be followed when a divestment occurs and the pension assets have not been transferred under a divestment agreement.

OMERS as the previous pension plan

(No transfer of assets and all four criteria met)

Any members who retain benefits under OMERS and, as a result of a divestment, transfer to a new employer with a registered pension plan are deemed to have a "special active" status under the OMERS plan. In accordance with Section 80 of the PBA, members are entitled to the benefits provided under the OMERS plan as of the date of divestment, without further accrual. Similar to deferred members, special active members are generally not entitled to most pension plan improvements that are implemented after the divestment date.

With respect to the new temporary early retirement provisions recently introduced by OMERS, we had originally anticipated that these benefits would not be available to special active members. However, the regulation wording has been released and, based on the legislation, special active members will indeed be entitled to these provisions.

In accordance with Section 80 of the PBA, special active members are entitled to some very important benefits:

- OMERS must recognize service with the new employer (while the member belongs to the new employer's registered pension plan) as eligible service in the OMERS plan when determining a member's eligibility for pension benefits;
- the new plan must include the employee's membership in the OMERS plan when determining eligibility for pension benefits;
- members continue to be entitled to purchase eligible service (as defined under the *Income Tax Act* and OMERS plan) that occurred prior to the divestment date, until the earliest of their termination of employment, retirement date or the date assets are transferred to the new plan;

- members can continue to make any amortization payments that started before the date of divestment directly to the OMERS plan; and
- if the disability requirements are met, members can receive a disability pension.

For example

With respect to the requirement that each pension plan must recognize the service in the other plan, let's assume that a member is 50 years of age and has 20 years of credited service in the OMERS plan as of the date of divestment. The member works and contributes to the pension plan of the new employer for 10 years before retiring. Under the OMERS plan, the member would be entitled to an unreduced pension under the 30 Year provision since the service in the OMERS plan (20 years), when added to the service with the new plan (10 years), equals 30 years. However, for pension calculation purposes, the OMERS pension would be based on 20 years of credited service.

The new plan would also use 30 years of qualifying service, however, depending on the provisions of the new plan, the member may or may not be entitled to an unreduced pension from that plan.

For OMERS pension calculation purposes, the member's earnings and the Year's Maximum Pensionable Earnings (YMPE), as of the date of divestment, are indexed in accordance with the OMERS plan provisions (similar to increases provided to those who are not contributing to the OMERS plan because they are on a disability waiver).

Member's Annual Statements

Member's Annual Statements will be mailed by OMERS directly to members' homes.

Termination/retirement benefits

In accordance with the PBA, a transferring member's employment is deemed not to have terminated as a result of the divestment. Therefore, termination and retirement benefits are only payable from OMERS once the member has terminated or retired with the new employer. OMERS will issue the appropriate election form once we have received notification from the new employer or pension plan administrator advising of the termination/retirement and any unpurchased leaves of absence. A *Form 143 – Notice of Member Event* is not required.

Any member who will not be employed by the new employer, or who will not continue as an employee of the old employer (i.e., a bona fide termination), is entitled to termination/retirement benefits immediately. A Form 143 is required.

Disability waiver benefits

In cases where a member was receiving a disability waiver benefit from OMERS prior to the divestment, continuation of this benefit is largely dependent on the employment relationship. Since each situation is different, please contact us and we will help.

Service purchases

An employer must continue to pay any outstanding liabilities they have for members who transfer to a

new employer as a result of a divestment. Where an OMERS employer ceases to exist as part of a divestment, any outstanding employer liabilities must be paid in full prior to the divestment date.

In the event that a divestment transfer agreement is signed, the member will be required to pay any outstanding member liabilities and finalize all purchases before a transfer of assets can occur (e.g., Buy-Backs, Optional Service, Broken Service, Pregnancy and Parental Leaves, NRA Conversion and Type 1 purchases).

How you can help

Advise us about the divestment immediately by:

- completing the attached *Employer Divestment Questionnaire*;
- completing the attached *Change of Member Status* form for each member who has been transferred to the new employer;
- providing a list of any members affected by the divestment who are receiving disability benefits (waiver or pension) from OMERS;
- providing a list of any members who have leaves of absence that have not yet been reported to OMERS;
- submitting Form 143s for any members who are neither transferring to the new employer nor continuing as an employee of your organization; and
- if your entire organization is divesting, amending your OMERS participation by-law/resolution to authorize the divestment and confirm the effective date of the divestment.

OMERS as the new pension plan

(No transfer of assets and all four criteria met)

Enrolment of continuous full-time (CFT) employees – If an employee of the former employer becomes employed by you on a continuous full-time basis as a result of the divestment, the following rules apply for enrolment in the OMERS plan.

- If the CFT employee was not a member of the former employer's pension plan, that employee must be offered OMERS membership. Any employee who elects not to enrol should sign a Waiver Form 103.
- If the CFT employee was a member of the former employer's pension plan, he or she must be enrolled in the OMERS plan immediately.

Enrolment of other-than-continuous full-time (OTCFT) employees – If an employee of the former employer becomes employed by you on an OTCFT basis as a result of the divestment, the following rules apply for enrolment in the OMERS plan.

- If you have a mandatory enrolment policy for OTCFT employees, any OTCFT employees must be offered OMERS membership. Any employee who elects not to enrol should sign a Waiver Form 103.
- If enrolment is not mandatory for these employees, you must recognize the service with the former employer when determining whether an employee has met the PBA requirements for joining the OMERS plan. (Please

read Section 6 of the OMERS *Administration Manual.*)

- Regardless of your rules with respect to enrolment of OTCFT employees, if an employee was a member of the previous pension plan, they must be enrolled in the OMERS plan immediately.

Eligible service

In accordance with Section 80 of the PBA, OMERS will recognize membership in the former pension plan as eligible service when determining eligibility for pension benefits. Service with the previous pension plan will be set up as 90/85 Factor (85/80 Factor under temporary provisions now in effect) service on the member's record. In addition, the previous plan will recognize the member's service in OMERS when determining eligibility for pension benefits under that plan.

OMERS has been meeting with the other public sector plans to work out arrangements to ensure that we are advised of the member's membership with the previous plan.

How you can help

Advise us immediately when you are involved in a divestment. We will need the following information:

- the particulars of the divestment;
- the name of the legislation, if any, governing the divestment;
- an amended OMERS participation by-law/resolution indicating the employer(s) being absorbed and the effective date;
- a list of all employees who have become employed by you as a result of the divestment and their employment status;
- enrolment cards for all employees joining OMERS;
- Waiver Form 103s for employees who elect not to join;
- the name of the previous employer including the address, telephone number and contact person; and
- the name of the previous pension plan.

OMERS Entitlements If All Four Criteria Are <u>Not</u> Met

If all four criteria listed in the first section are not met, the PBA does not require pension plans to protect the pension as outlined in Section 80. For example, if an OMERS employer outsources a service to another employer who has an RRSP arrangement (rather than a registered pension plan) or no pension plan, any members transferred to the new employer would not be entitled to the pension protection provided by Section 80 of the PBA.

However, this section of the PBA also states that employment is deemed not to have terminated as a result of the sale, assignment or disposition of all or part of the employer's business or assets. Therefore, in accordance with the OMERS plan and Section 38 of the PBA, benefits cannot be paid until the earliest of the member's termination of employment, retirement date, death or 24 months following the last date contributions were made to OMERS.

To obtain the benefit options available after the 24 months have expired, members will have to contact OMERS directly.

Note: If the new employer starts a registered pension plan within 24 months of the divestment date, and all four conditions are then met, the rules that must be followed are those outlined in the preceding section: "OMERS Entitlements If All Four Criteria Are Met" (pages 1-5).

Other Information

If you are holding contributions...

We are aware that some employers who have divested this year and are no longer eligible OMERS employers have been deducting contributions with the expectation that the OMERS plan would be amended to allow members who were part of a divestment to continue participation in the plan.

Unfortunately, this amendment to our plan has not been passed by the provincial government. We hope these changes will be approved by the government sometime during 1998. In the meantime, any employers in this situation will have to make a decision with respect to the disposition of their 1997 pension contributions as quickly as possible.

For more information

If you need any more information about divestments, please call OMERS Client Services at (416) 369-2444 or, toll-free, 1-800-387-0813. We'll also provide meetings for employers, groups of employees, unions and associations.

Notes

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